

**Letter of Findings: 02-20120338  
Interest Payment  
For the Year 2007**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Interest Calculation – Income Tax.**

**Authority:** [IC 6-3-4-5](#); [IC 6-8.1-10-1](#); [IC 6-8.1-10-1\(b\)](#).

Taxpayer argues that the Department of Revenue erred when it calculated an amount of interest owed based on the April 15 date of Taxpayer's original 2007 income tax return.

**STATEMENT OF FACTS**

Taxpayer filed its 2007 Indiana corporate income tax return on October 15, 2008 after having duly requested an extension. Taxpayer paid the amount of tax due.

On February 15, 2010, Taxpayer filed an amended 2007 Indiana corporate income tax return. The return "carried back" a net operating loss ("NOL") generated during 2008. The 2007 return generated a refund request of approximately \$1,200,000. The refund was granted and Taxpayer received the money.

Thereafter, the IRS audited Taxpayer. The IRS audit resulted in a downward adjustment of the available 2008 NOLs. In December 2011, Taxpayer filed a second amended 2007 return reflecting the fact that Taxpayer had fewer 2008 NOLs to carry back to 2007. As a result, Taxpayer owed approximately \$440,000 in tax. Taxpayer calculated the interest due on that amount. Taxpayer calculated that it owed approximately \$56,000 in interest and paid that amount. Taxpayer calculated interest as running from the date it received the \$1,200,000 refund on May 2010 to the date it paid Indiana the \$440,000.

The Department of Revenue ("Department") disagreed with Taxpayer's interest calculation. The Department concluded that Taxpayer owed an additional \$54,000 in interest. The Department calculated interest from the April 15 date that the original 2007 income tax would have been due on April 15, 2008.

Taxpayer disagreed with the assessment of additional interest and submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results.

**I. Interest Calculation – Income Tax.**

**ISSUE**

Taxpayer owed tax based on a second amended 2007 return. Taxpayer owed interest on that amount. The issue is from what date should the interest on the assessment be calculated. Should interest be calculated from the date that Taxpayer received the refund in May 2010 or should it be calculated based on the date that the original 2007 tax was due? Taxpayer disagrees with the Department's stance as follows:

[Taxpayer] respectfully disagree[s] with the calculation [that] imposed additional interest due to the fact that the tax paid on the second amended return was due solely to a change in the net operating loss carry-back and essentially a re-payment of the refund received on the first amended return.

In effect, Taxpayer argues that it should only pay interest during the time that it had the "use" of the \$440,000. Taxpayer had "use" of the \$440,000 from the May 2010 date on which the Department issued the full refund of \$1,200,000 until the date that Taxpayer returned the \$440,000 amount back to the Department.

[IC 6-8.1-10-1](#) states in part as follows:

(a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the adjusted rate established by the commissioner under subsection (c) from the due date for payment.

Under [IC 6-8.1-10-1](#), interest runs from the "due date for payment." The 2007 tax dollars at issue were due on April 15, 2008. As noted above, Taxpayer filed for an extension and paid the tax on October 15, 2008; it may be useful to note that, despite the extension, Taxpayer would have owed interest on the amount it paid October 15 because the payment was due on April 15, 2008.

In this particular instance, Taxpayer makes the argument that the interest amount it paid was correct because – from October 15, 2008, until it filed the first amended return February 15, 2010 – the state of Indiana had possession and benefit of the full amount of the original tax during that 16 month period. Under Taxpayer's logic, it should only be required to pay interest from the date it had use of the \$440,000 which was the date that the Department issued Taxpayer the \$1,200,000 until the date that Taxpayer returned the \$440,000.

On the surface, Taxpayer makes a somewhat compelling argument but only if one treats the Department as a lending institution. In the case, the \$440,000 was – and always was – tax that was due on April 15, 2008 and [IC](#)

[6-8.1-10-1](#) (b) plainly states that interest runs on that amount from the date that the tax was due. Under [IC 6-3-4-5](#), the 2007 tax was due April 15, 2008, and any interest runs from that date until the liability is paid.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 11/28/2012 by Legislative Services Agency*

An [html](#) version of this document.